IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	§	Group Art Unit: 3684
	§	
Nobuyoshi Morimoto	§	Examiner: Nguyen, Nga B.
	§	
	§	Atty. Dkt. No.: 5596-00301
	§	
Serial No. 09/895,457	§	
	§	
Filed: June 29, 2001	§	
	§	
For: SYSTEM AND METHOD FOR NEGOTIATING IMPROVED TERMS FOR PRODUCTS AND SERVICES BEING PURCHASED THROUGH THE INTERNET	§	

REPLY BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir/Madam:

Further to the Notice of Appeal filed January 18, 2011, and in response to the Examiner's Answer of June 23, 2011, Appellant presents this Reply Brief.

I. STATUS OF CLAIMS

Claims 1-44 are pending in the application and stand finally rejected. The rejection of claims 1-44 is being appealed. A copy of the appealed claims, as currently pending, is included in the Claims Appendix herein below.

II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-44 stand finally rejected under 35 U.S.C. § 103(a) as purportedly being unpatentable over Lustig et al. (U.S. Publication 2002/0002531) (hereinafter "Lustig") in view of Seymour et al. (U.S. Patent 6,871,190) (hereinafter "Seymour").

III. ARGUMENT

Claims 1-44 stand finally rejected under 35 U.S.C. § 103(a) as purportedly being unpatentable over Lustig in view of Seymour. Appellant traverses this rejection for at least the following reasons. Different groups of claims are addressed under their respective subheadings.

As an initial matter, Appellant submits that the Examiner's Answer dated June 23, 2011 presents no new arguments and either repeats arguments made in the Final Office Action dated September 15, 2010 or applies previous arguments to different claims.

Section 35 U.S.C. § 103(a) Rejection: Claims 1, 4-7, 9, 13, 28, and 43

In regard to claim 1, Appellant respectfully maintains that the cited art fails to teach or suggest all the elements of independent claim 1. Specifically, the cited art fails to teach or suggest (1) receiving information indicating one or more default standards for a purchaser, where the default standards specify product or service characteristics that are preferred by the purchaser, (2) comparing terms of sale for sale offers located from searching for sale offers to (a) the initial terms of sale and (b) the default standards, and (3) presenting one of the sale offers located from searching for sale offers to the purchaser, where the presented sale offer includes improved terms of sale and meets the default purchasing standards.

Appellant respectfully submits that arguments presented in the Appeal Brief filed March 18, 2011 continue to apply to the arguments repeated in the Examiner's Answer. In addition, Appellant presents further arguments below addressing the Examiner's arguments.

In regard to the claimed "receiving information" limitation, Appellant respectfully submits that the Examiner continues to fail to recognize the distinction between the claimed "default standards" and "initial terms of sale." Appellant submits that Lustig fails

to teach or suggest "receiving information indicating one or more default standards for a purchaser, wherein said default standards specify product or service characteristics that are preferred by said purchaser" and "subsequent to said receiving, detecting an issuance of a commitment to purchase, by said purchaser, said product or service according to initial terms of sale", as claimed.

The Examiner's Answer submits that because an offer for a product in Lustig includes at least two parameters indicating product characteristics, an offer in Lustig is equivalent to the claimed default standards. *See* Final Office Action, pp. 2 and 3. However, as recited in claim 1, the claimed default standards are what an ordinary artisan would expect them to be, a customer's purchasing preferences that exist prior to a search for sale offers for a product or service. In Lustig, the cited parameters describe an offer after a product has been found. Appellant submits that in Lustig, an offer exists only after a customer has searched for a product, and therefore it is not possible for Lustig's offer parameters to serve as any type of guide or an indication of a purchasing preference for a search for a product in the first place. In other words, The Examiner's Answer does not give any weight to how characteristics are used.

The Examiner's Answer is essentially arguing that because an element exists in common (product characteristics), that the reference discloses the claimed usage of the element – an argument that would render obvious any new process that makes novel use of known elements. Therefore, Appellant respectfully submits that Ludwig fails to teach or suggest any default standards, or product or service characteristics, that serve as purchasing preferences that are something to be met in order to arrive at the step of presenting sale offers for a product, as claimed.

The Examiner submits a second argument for Lustig purportedly teaching the claimed default purchasing standards. *See* Final Office Action, p. 6. The Examiner submits that in Lustig, an original offer combined with a selected indicator submitted by a user are equivalent to the claimed default standards for a purchaser. *See* Final Office Action, p. 6 (citing Lustig, ¶¶ [0070]-[0073]). In the cited section of Lustig, the indicator

is a button serving to indicate to a user that if the indicator is selected the functionality of Lustig's method will be accessed and carried out with regard to the offer adjacent to the button. *See* Lustig, ¶ [0072] Appellant submits that Lustig's indicator button is not comparable to the claimed default purchasing standards at least because Lustig's indicator is presented adjacent to the product offer and the indicator is unrelated to serving as any type of purchasing preference or guide for a search for the product in the first place. This is to say that Lustig's indicator button does not "specify product or service characteristics that are preferred by [a] purchaser", as claimed because Lustig's indicator button is only presented after the product is found. Lustig's indicator button simply presents a user with the option to initiate Lustig's offer comparison method and to commit to abide by the terms of the offer comparison method. Therefore, Appellant respectfully submits that Lustig's indicator button fails to teach or suggest the claimed default purchasing standards, or product or service characteristics that serve as purchasing preferences that are something to be met in order to arrive at the step of presenting sale offers for a product, as claimed.

In regard to the claimed "comparing terms" limitation, The Examiner again submits that Lustig teaches the claimed "comparing terms of sale for sale offers located from said searching to said initial terms of sale and to said default standards" because Lustig teaches a matching program that compares an original offer with an available offer. *See* Final Office Action, p. 3. However, as discussed above, Lustig provides no teaching of the claimed default purchasing standards. Without Lustig teaching default purchasing standards it is not possible for Lustig to compare terms of sale for a sale offer to both initial terms of sale and to default standards, as claimed. **In other words, in claim 1, the terms of sale for a sale offer are not simply compared against the terms of sale for another offer, but also to default purchasing standards.**

A further consequence of Lustig's failure to teach or suggest the claimed default purchasing standards is that Ludwig also fails to teach or suggest "presenting one of the sale offers located from said searching to the purchaser, wherein the presented sale offer includes said improved terms of sale and meets said default standards", as claimed. In

other words, Appellant's claim requires that the presented sale offer include **both** improved terms **and** meet the default standards. This requirement is clearly not disclosed by Lustig.

In regard to Seymour, Appellant submits that no teachings of Seymour have been cited against the above discussed limitations. Regardless, Seymour does not overcome any of the above-noted deficiencies of Lustig in regard to Appellant's claim 1. Thus, even when considered in combination the cited art fails to teach or suggest the claimed "receiving", "comparing", and "presenting" limitations of claim 1.

Thus, for at least the reasons presented above, the rejection of claim 1 is unsupported by the cited art and removal thereof is respectfully requested.

Section 35 U.S.C. § 103(a) Rejection: Claim 2

In regard to claim 2, Lustig in view of Seymour fails to teach or suggest wherein said detecting [of an issuance of a commitment to purchase] comprises detecting said purchaser entering a credit card number, a pre-paid account number, a gift certificate number, an escrow account number, or a bank guaranty number. The Examiner cites paragraph [0047], which describes user information including payment information, such as a credit account number. However, nowhere does Lustig teach or suggest that such user information is detected as part of detecting an issuance of a commitment to purchase with associated terms for said product or service being purchased by the purchaser. In other words, no weight is given to how the claimed elements are used.

Further, the method by which Lustig initiates the disclosed offer comparison method is for a user to select an indicator button/hyperlink that is adjacent to an offer to a user. *See* Lustig, ¶¶ [0072] and [0073]. Thus, in Lustig, a user commits to the terms of Lustig's offer comparison method by clicking on a button or hyperlink. The cited sections of Lustig and Seymour are silent regarding detecting an issuance of a commitment to purchase that comprises detecting the purchaser entering a credit card number, a pre-paid

account number, a gift certificate number, an escrow account number, or a bank guaranty number.

Thus, for at least the reasons presented above, the rejection of claim 2 is unsupported by the cited art and removal thereof is respectfully requested.

Section 35 U.S.C. § 103(a) Rejection: Claim 3

In regard to claim 3, Lustig in view of Seymour fails to teach or suggest wherein said detecting comprises detecting said purchaser accessing a particular web page. The Examiner cites a section of Lustig describing an indicator button by which a user may initiate an offer comparison process. *See* Final Office Action, p. 8 (citing Lustig, ¶¶ [0070] and [0072]). However, nowhere does Lustig teach or suggest that detecting an issuance of a commitment to purchase is done by detecting a purchaser viewing a particular web page. In Lustig, a user needs to select on the indicator button, not simply view the web page where the indicator button is presented. Thus, Appellant submits that Lusting in view of Seymour fails to teach or suggest this limitation.

Thus, for at least the reasons presented above, the rejection of claim 3 is unsupported by the cited art and removal thereof is respectfully requested.

Section 35 U.S.C. § 103(a) Rejection: Claim 8

In regard to claim 8, Lustig in view of Seymour fails to teach or suggest wherein said commitment to purchase comprises a purchase order for which payment has been guaranteed by said purchaser. The Examiner cites paragraph [0047] of Lustig, which describes user information, which includes payment information. However, nowhere does Lustig teach or suggest a purchase order for which payment has been guaranteed by said purchaser, much less wherein said commitment to purchase comprises a purchase order for which payment has been guaranteed by said purchaser.

Thus, for at least the reasons presented above, the rejection of claim 8 is unsupported by the cited art and removal thereof is respectfully requested.

Section 35 U.S.C. § 103(a) Rejection: Claim 10

In regard to claim 10, Lustig fails to teach or suggest determining that a commitment to purchase represents an area of interest for an improved terms of sale service provider, as claimed. The Examiner cites a section of Lustig describing the presentation to a user of an offer, where adjacent to the offer presented to the user within a web page, a button or hyperlink is displayed for the user to indicate acceptance of the terms of an offer comparison method and also to initiate the offer comparison method. *See* Final Office Action, p. 9 (citing Lustig, ¶ [0072]). However, this section of Lustig does not condition the presentation of an indicator button/hyperlink in any way. In other words, in Lustig, for every offer presented to a user, the user is given the option to initiate the offer comparison method. By contrast, claim 10 recites that an offer to a purchaser to negotiate improved terms of a sale is made in response to determining that a commitment to purchase represents an area of interest for improved terms of sale service provider. In the cited sections of Lusting, there is no determination of whether a purchase represents an area of interest for an improved terms of sale service provider.

Thus, for at least the reasons presented above, the rejection of claim 10 is unsupported by the cited art and removal thereof is respectfully requested.

Section 35 U.S.C. § 103(a) Rejection: Claim 11

In regard to claim 11, Lustig fails to teach or suggest wherein conducting said search for said improved terms comprises conducting an auction amongst a plurality of suppliers for said product. The Examiner cites paragraph [0078] of Lustig, which is reproduced below:

> Further with regard to the functionality accessible through the hypertext link, once the Order Server 150 receives the original offer information and the request, the Order Server 150 transmits a corresponding request along

> with the original offer information to the Matching Engine 250 to initiate and facilitate a matching process. In response to the request and using the original offer information, the matching program 260 performs the matching process, in which the matching program 260 accesses the available offer information in the matching database 270, compares the available offer information with the original offer information to determine whether the better offer is available.

(Emphasis added.) Lustig fails to teach or suggest anything related to conducting a search for improved terms comprising conducting an auction amongst a plurality of suppliers for a product. Instead, Lustig teaches accessing available offer information from a database. No one of ordinary skill in the art would confuse accessing available offer information from a database with conducting an auction amongst a plurality of suppliers for a product. While Seymour discloses a "system and method for conducting an electronic auction over an open communications network", the Examiner fails to provide any reason as to why one of ordinary skill in the art would combine the teachings of Seymour with the teachings of Lustig to create the specific method of claim 11.

Thus, for at least the reasons presented above, the rejection of claim 11 is unsupported by the cited art and removal thereof is respectfully requested.

Section 35 U.S.C. § 103(a) Rejection: Claim 12

In regard to claim 12, Lustig in view of Seymour fails to teach or suggest entering a legal contract with said purchaser to supply said product under said improved terms. The Examiner cites paragraph [0079] of Lustig, which is reproduced below:

> The request by the Order Server 150 instructs and authorizes the Matching Engine 250 to accept the better offer on behalf of the User if the better offer is available. In this embodiment, the request by the Order Server 150 also instructs and authorizes the Matching Engine 250 to accept the original offer on behalf of the User if the better offer is not available and the original offer is in the matching database 270. In other embodiments, the request by the Order Server 150 also instructs and authorizes the Matching Engine 250 to accept the original offer on behalf of the User if the better offer is not available, even if the original offer is not in the matching database 270 before the request is made (e.g., the request by the

> Order Server 150 can also instruct the Matching Engine 250 to include the original offer information in the matching database 270).

Lustig, even when combined with Seymour, fails to teach or suggest anything related to a legal contract, much less entering a legal contract with a purchaser to supply a product under improved terms. Instead, Lustig teaches accepting a better offer or accepting an original offer. However, nowhere does Lustig teach or suggest that accepting an offer is the same as entering a legal contract with a purchaser to supply a product under improved terms.

Thus, for at least the reasons presented above, the rejection of claim 12 is unsupported by the cited art and removal thereof is respectfully requested.

Section 35 U.S.C. § 103(a) Rejection: Claims 14, 17-20, 22, 26, and 27

In regard to the system elements of claim 14, the Examiner cites to sections of Lustig as purportedly disclosing a client computer system, a web site server, and a computer program executable on the client computer system. *See* Final Office Action, p. 10 (citing Lustig, ¶¶ [0048]-[0053]). Without agreeing that Lustig teaches these system elements, Appellant submits that the remaining limitations are similar to those discussed above with regard to claim 1. Therefore, Appellant respectfully submits that the arguments presented above with regard to claim 1 apply similarly to claim 14.

Thus, for at least the reasons presented above, the rejection of claim 14 is unsupported by the cited art and removal thereof is respectfully requested.

Section 35 U.S.C. § 103(a) Rejection: Claim 15

Claim 15 recites limitations similar to those within claim 2, and claim 15 has been rejected using similar reasoning. Therefore, Appellant respectfully submits that the arguments presented above with regard to claim 2 apply similarly to claim 15.

Thus, for at least the reasons presented above, the rejection of claim 15 is unsupported by the cited art and removal thereof is respectfully requested.

Section 35 U.S.C. § 103(a) Rejection: Claim 16

Claim 16 recites limitations similar to those within claim 3, and claim 16 has been rejected using similar reasoning. Therefore, Appellant respectfully submits that the arguments presented above with regard to claim 3 apply similarly to claim 16.

Thus, for at least the reasons presented above, the rejection of claim 16 is unsupported by the cited art and removal thereof is respectfully requested.

Section 35 U.S.C. § 103(a) Rejection: Claim 21

Claim 21 recites limitations similar to those within claim 8, and claim 21 has been rejected using similar reasoning. Therefore, Appellant respectfully submits that the arguments presented above with regard to claim 8 apply similarly to claim 21.

Thus, for at least the reasons presented above, the rejection of claim 21 is unsupported by the cited art and removal thereof is respectfully requested.

Section 35 U.S.C. § 103(a) Rejection: Claim 23

Claim 23 recites limitations similar to those within claim 10, and claim 23 has been rejected using similar reasoning. Therefore, Appellant respectfully submits that the arguments presented above with regard to claim 10 apply similarly to claim 23.

Thus, for at least the reasons presented above, the rejection of claim 23 is unsupported by the cited art and removal thereof is respectfully requested.

Section 35 U.S.C. § 103(a) Rejection: Claim 24

Claim 24 recites limitations similar to those within claim 11, and claim 24 has been rejected using similar reasoning. Therefore, Appellant respectfully submits that the arguments presented above with regard to claim 11 apply similarly to claim 24.

Thus, for at least the reasons presented above, the rejection of claim 24 is unsupported by the cited art and removal thereof is respectfully requested.

Section 35 U.S.C. § 103(a) Rejection: Claim 25

Claim 25 recites limitations similar to those within claim 12, and claim 25 has been rejected using similar reasoning. Therefore, Appellant respectfully submits that the arguments presented above with regard to claim 12 apply similarly to claim 25.

Thus, for at least the reasons presented above, the rejection of claim 25 is unsupported by the cited art and removal thereof is respectfully requested.

Section 35 U.S.C. § 103(a) Rejection: Claims 29, 33, 34, 39, and 40

In regard to claim 29, the Examiner's Answer has provided a basis for rejection not previously found in the Final Office Action. In response, Appellant submits that the cited art fails to teach or suggest all of the elements of independent claim 29. Specifically, the cited art fails to teach or suggest (1) detecting an action by a purchaser that indicates that the purchaser is about to make an original purchase for a particular item or service for a particular price, (2) determining that the purchaser agrees to wait a predetermined amount of time in exchange for a possibility of securing a better price, and (3) purchasing the particular item or service for the purchaser at the better price and charging the purchaser a new price between the particular price and the better price.

In regard to the claimed "detecting an action" limitation, the cited sections of Lustig present an offer to a user on a web page, where adjacent to the offer presented is a button or hyperlink that the user can select in order to both initiate an offer comparison method and to indicate that the user will abide by terms of the offer comparison method. *See* Lustig, ¶¶ [0072] and [0073]. Lustig's method is initiated by a user selecting a button or hyperlink that explicitly invokes Lustig's offer comparison method. At the point that the option of invoking Lustig's method is presented to a user, a first offer is already in front of the user. By contrast, claim 29 recites detecting an action by a purchaser indicating that the purchaser is about to make an original purchase. Thus, Lustig's offer comparison method is invoked when a user clicks on a button defined to initiate Lustig's method, but claim 29 begins by reciting detecting an action by a purchaser indicating that the purchaser is about to make an original purchase.

Further, Lustig is silent on any determination made of whether a purchaser will agree to wait a predetermined amount of time in exchange for a possibility of securing a better price for a particular item or service.

Lustig in view of Seymour also fails to teach or suggest that if a better price than a particular price is found before the predetermined amount of time expires, purchasing the particular item or service for the purchaser at the better price and charging the purchaser a new price between the particular price and the better price. Lustig's system discloses only that the best offer found is accepted on behalf of the user. Nowhere does Lustig mention purchasing an item or service at a better price and charging the purchaser a new price between the particular price and the better price. Similarly, Seymour is silent regarding this limitation of Appellant's claim. Seymour's automated auction system allows buyers and sellers said to configure specific auction strategies that are implemented by bidder and seller agents. Nothing in Seymour teaches or suggests purchasing the particular item or service for the purchaser at the better price and charging the purchaser a new price between the particular price and the better price. Additionally, there is nothing about the Examiner's combination of Lustig and Seymour that teaches or suggests this limitation of Appellant's claim.

In the Examiner's Answer, the Examiner submits that Lustig discloses multiple offers being presented to a purchaser, where each offer includes a price parameter. Further, the Examiner presents a scenario where given multiple offers, there may be a selection of an offer from among multiple offers such that the selected offer has a price between two other offers. The scenario presented by the Examiner pertains to selection of an offer among multiple offers. By contrast, as recited in claim 29, a purchaser is originally presented an offer for a product or service at a particular price, say $20, then after a search for a better price, a purchase is made of the product or service at a better price, say $15 – at this point, a purchase is made for $15, and the purchaser is charged a price between the original price of $20 and the better price of $15. In other words, the claimed process is not simply making a purchase for the purchaser at the best price and passing along the best price, the process is finding a best price and the purchaser is then given a better price than originally expected, but the purchaser is not passed along the best price. While Lustig may purchase a product with a price between other offers, when Lustig's system makes a purchase, the customer is only charged that purchase price. Lustig does not make purchases of a product and then charge a customer a price between the purchase price and an originally expected price. Therefore, Applicants respectfully submit that Lustig fails to teach or suggest the claimed purchasing of a particular item or service for a purchaser at the better price and charging the purchaser a new price between the particular price and the better price.

In the Advisory Action, the Examiner presented an initial version of the argument presented in the Examiner's Answer. The Advisory Action refers to Lustig's system potentially accepting a better offer than the user's originally selected offer on behalf of the user. *See* Lustig, ¶ [0072]. The Examiner then asserts, "Lustig obviously teaches purchasing the particular item [or] service for the purchaser [at] the better price and charging the purchaser a new price between the particular price and the better price." However, the Examiner's assertion is unsupported by the actual teachings of the reference. For reasons similar to those presented above with respect to the Examiner's Answer, nowhere does Lustig, even if viewed in light of Seymour, teach anything regarding purchasing the item for the purchaser at the better price and charging the

purchaser a new price between the particular price and the better price. Further, the very wording used by Lustig seems to teach away from charging the user a new price between price of Lustig's original offer and the price of a better offer. As admitted by the Examiner, Lustig teaches that his system, "accepts the better offer on behalf of the User." Lustig, ¶¶ [0009], [0015], [0025], [0019], and [0081]. Accepting a better offer on behalf of the user implies that the better offer, and hence the cost or price of the better offer, is accepted by Lustig's system for the user. In contrast, Appellant's claim specifically recites charging the purchaser a new price between the particular price and the better price. Therefore, Lustig's system does not necessarily or inherently include or even suggest charging the user a price between the original price and the better price.

In regard to Seymour, Appellant submits that no sections of Seymour have been cited against the above discussed limitations. Thus, even when considered in combination with Seymour, Lustig fails to teach or suggest the claimed "detecting an action", "determining", and "purchasing" limitations of claim 29.

Thus, for at least the reasons presented above, the rejection of claim 29 is unsupported by the cited art and removal thereof is respectfully requested.

Section 35 U.S.C. § 103(a) Rejection: Claim 30

Regarding claim 30, Lustig in view of Seymour fails to teach or suggest wherein if an original purchase for a particular item at a particular price is not available to be made after searching is complete, purchasing the particular item for a purchaser at another price and charging the purchaser the particular price.

Further, Lustig in view of Seymour appears to teach away from this limitation. As admitted by the Examiner, Lustig teaches that his system, "accepts the better offer on behalf of the User." Lustig, ¶¶ [0009], [0015], [0025], [0019], and [0081]. Accepting a better offer on behalf of the user implies that the better offer, and hence the cost or price of the better offer, is accepted by Lustig's system for the user. By contrast, Appellant's

claim recites purchasing a particular item for said purchaser at another price and charging the purchaser a particular price. Nowhere does Lustig, even when combined with Seymour, teach or suggest charging a purchaser a price that is different than a price at which a particular item was purchased.

Thus, for at least the reasons presented above, the rejection of claim 30 is unsupported by the cited art and removal thereof is respectfully requested.

Section 35 U.S.C. § 103(a) Rejection: Claim 31

Claim 31 recites limitations similar to those within claim 2, and claim 31 has been rejected using similar reasoning. Therefore, Appellant respectfully submits that the arguments presented above with regard to claim 2 apply similarly to claim 31.

Thus, for at least the reasons presented above, the rejection of claim 31 is unsupported by the cited art and removal thereof is respectfully requested.

Section 35 U.S.C. § 103(a) Rejection: Claim 32

Claim 32 recites limitations similar to those within claim 3, and claim 32 has been rejected using similar reasoning. Therefore, Appellant respectfully submits that the arguments presented above with regard to claim 3 apply similarly to claim 32.

Thus, for at least the reasons presented above, the rejection of claim 32 is unsupported by the cited art and removal thereof is respectfully requested.

Section 35 U.S.C. § 103(a) Rejection: Claim 35

In the above discussion regarding claim 12, Appellant argues why Lustig fails to teach or suggest entering into a legal contract with a purchaser to supply a product under improved terms. Similar rationale as is used in the discussion regarding claim 12 applies

to claim 35 to establish Lustig's lack of teaching of entering into contracts. Further, claim 35 recites that a purchaser is offered an opportunity to enter into an alternative contract and displaying the alternative contract to make the original purchase. Because Lustig fails to teach or suggest entering into a legal contract of any kind with a purchaser, it follows that Lustig also fails to teach or suggest the limitations of claim 35.

Thus, for at least the reasons presented above, the rejection of claim 35 is unsupported by the cited art and removal thereof is respectfully requested.

Section 35 U.S.C. § 103(a) Rejection: Claim 36

Claim 36 recites limitations similar to those within claim 8, and claim 36 has been rejected using similar reasoning. Therefore, Appellant respectfully submits that the arguments presented above with regard to claim 8 apply similarly to claim 36.

Thus, for at least the reasons presented above, the rejection of claim 36 is unsupported by the cited art and removal thereof is respectfully requested.

Section 35 U.S.C. § 103(a) Rejection: Claim 37

Claim 37 recites limitations similar to those within claim 10, and claim 37 has been rejected using similar reasoning. Therefore, Appellant respectfully submits that the arguments presented above with regard to claim 10 apply similarly to claim 37.

Thus, for at least the reasons presented above, the rejection of claim 37 is unsupported by the cited art and removal thereof is respectfully requested.

Section 35 U.S.C. § 103(a) Rejection: Claim 38

Claim 38 recites limitations similar to those within claim 11, and claim 38 has been rejected using similar reasoning. Therefore, Appellant respectfully submits that the arguments presented above with regard to claim 11 apply similarly to claim 38.

Thus, for at least the reasons presented above, the rejection of claim 38 is unsupported by the cited art and removal thereof is respectfully requested.

Section 35 U.S.C. § 103(a) Rejection: Claims 41 and 42

Regarding claim 41, the Examiner has rejected these limitations by claiming that similar limitations are found within claim 29, and therefore claim 41 is rejected by the same rationale. In the Final Office Action, claim 41 had been rejected on a basis similar to the rejection of claim 1. However, claim 41 recites limitations not recited within either claim 1 or claim 29, among these are (1) detecting an action by a purchaser that indicates that the purchaser is about to make an original purchase for a particular item or service for a particular price, and (2) intercepting a message over the internet to delay the purchase, where the message includes commitment-to-purchase information for the purchaser regarding the item or service.

Appellant submits that Lustig in view of Seymour fails to teach or suggest intercepting a message over the Internet to delay the purchase for a predetermined amount of time, wherein the message includes commitment-to-purchase information for the purchaser regarding the item or service. The Examiner asserts that intercepting a message over the Internet is "well known in the art" and that it would have been obvious "to modify Lustig's [system] in combining with Seymour … for the purpose of providing more efficiency and convenien[ce] in communication over the Internet." Final Office Action, pp. 10 and 11. However, the Examiner's assertion that intercepting a message over the Internet, where the message includes commitment-to-purchase is well known is merely the Examiner's opinion. The Examiner has not cited any prior art that supports the

Examiner's contention that it is obvious to intercept a message over the Internet where the message includes commitment-to-purchase information. M.P.E.P. 2144.03A states, "It is never appropriate to rely solely on 'common knowledge' in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based." The Examiner has merely stated that it is "well known in the art" to intercept a message over the Internet where the message includes commitment-to-purchase information. The Examiner's assertion is the "principal evidence" upon which the rejection of Appellant's claim limitation is based.

Further, the Examiner's rejection does not take into account the full and complete language of Appellant's claim. The Examiner's rejection does not address the fact that claim 41 recites intercepting a message over the Internet to delay the purchase for a predetermined amount of time. Lustig and Seymour, as admitted by the Examiner do not mention anything regarding intercepting a message over the Internet to delay the purchase for a predetermined amount of time. The Examiner does not cite any prior art that teaches or suggests intercepting a message to delay a purchase for a predetermined amount of time. The Examiner's combination of cited art thus fails to teach or suggest all claim limitations. M.P.EP. §2143.03 recites that all claim limitations must be taught or suggested by the prior art to establish prima facie obviousness.

Further still, the Examiner has failed to provide a proper reason for modifying Lustig in view of Seymour. The Examiner has stated a general goal of improving the efficiency of Internet communication. The reason given by the Examiner would actually teach away from Appellant's claimed invention. An ordinary artisan seeking to "provide more efficiency and convenience in Internet communication" would not be motivated to modify the combination of Lustig and Seymour to include intercepting a message over the Internet to delay a purchase for a predetermined amount of time, where the message includes commitment-to-purchase information.

Thus, for at least the reasons presented above, the rejection of claim 41 is unsupported by the cited art and removal thereof is respectfully requested.

Section 35 U.S.C. § 103(a) Rejection: Claim 44

Regarding claim 44, the Examiner has rejected these limitations by claiming that similar limitations are found within claim 29, and therefore claim 41 is rejected by the same rationale. In the Final Office Action, claim 41 had been rejected on a basis similar to the rejection of claim 1. However, claim 41 recites limitations not recited within either claim 1 or claim 29, among these are seeking a better price, where the seeking the better price includes a plurality of broker-agent programs performing multiple searches in parallel for the better price.

Appellant submits that Lustig in view of Seymour fails to teach or suggest a plurality of broker-agent programs performing multiple searches in parallel for the better price. The Examiner states, "retrieving and comparing a plurality of available offers to determine the better offer is considered equivalent to performing multiple searches in parallel for better price", referring to Lustig's matching programming organizing, storing, and retrieving a plurality of offers from a matching database. Appellant disagrees with this characterization of Lustig. Lustig, even if combined with Seymour, does not teach a plurality of broker-agent programs performing multiple searches in parallel for the better price. The Examiner further states that Lustig's matching program "organizes, stores, and retrieves a plurality of available offers from a matching database" (emphasis added). Thus, as admitted by the Examiner, Lustig teaches retrieving other offers from a database, not a plurality of broker-agent programs. Not only is Lustig silent on retrieving other offers from a plurality of broker-agent programs, there is no indication that Lustig considers any type of parallel processing. The Examiner's contention that retrieving a plurality of offers from a database is "equivalent to" performing multiple searches in parallel is simply incorrect and is unsupported by the cited art. Essentially, the Examiner's contention reduces parallel processing to serial processing and nullifies the parallel nature of parallel processing.

Thus, for at least the reasons presented above, the rejection of claim 44 is unsupported by the cited art and removal thereof is respectfully requested.

CONCLUSION

For the foregoing reasons, it is submitted that the Examiner's rejection of claims 1-44 was erroneous, and reversal of the Examiner's decision is respectfully requested.

The Commissioner is authorized to charge any fees that may be due to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5596-00301/RCK.

Respectfully submitted,

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